

Presentation at the Investigative Public Hearing on Unremitted Oil Revenue to the Federation Account by NNPC on Tuesday, 4 February, 2014

Executive Summary

I am pleased to stand before you and present a summary of my latest submission on this subject. The submission itself is about 20 pages long with 30 Appendices, providing documentary backing for all material statements. The background to this Session remains my letter to the President in which I indicated that there was a difference between the value of crude lifted by NNPC between January 2012 and July 2013 and the amount of foreign exchange repatriated into the Federation Account. This difference was placed at almost \$50 billion and I respectfully advised the President to order an investigation into a number of areas I suspected were responsible for leakages in oil revenue.

My letter was, sadly, leaked and published in a highly politically-charged atmosphere. The Central Bank was practically accused of involvement in politics and in December it was clear to me that no tempered and positive discussion would take place. In order to calm nerves and avert a major crisis I agreed to a joint press conference with the Finance Ministry, the Petroleum Ministry, and to also present a common front at the National Assembly.

Since December, however, there has been an orchestrated campaign aimed at undermining our credibility and misleading Nigerians into believing that all monies due to the Federation Account have been either remitted or adequately accounted for. I am therefore compelled to present to this committee detailed evidence that NNPC has in violation of the Law and constitution been diverting money from the Federation Account, and involving itself in activities that warrant full investigation for more serious violations of the Law.

I have established, in my presentation, the following:

1. That NNPC, in paying what it calls kerosene subsidy, is confessing to a number of serious infractions. First, I have shown, based on NBS data, that kerosene is not a subsidized product, and therefore the so-called subsidy is rent generated for the benefit of those in the kerosene business. Second, I have produced evidence that President Yar'Adua had issued a presidential directive eliminating this subsidy payment as from July, 2009. Third, these huge losses inflicted on the Federation Account have not been appropriated.

The burden of proof on NNPC is to show where they obtained authorisation to purchase kerosene at N150/litre from Federation funds and sell at about N40/litre, knowing fully well that this product sells in the market at N170 –N220/litre. At what point was the presidential directive reversed? NPA records would suggest that NNPC imports about 4-6 vessels of kerosene a month. Industry sources place the value of each vessel at \$30m and the amount of "subsidy" per vessel at \$20m. This means, at an average of 5 vessels a month, the Federation Account loses \$100m every month to this racket.

2. I have also shown, in my submission, that claims by NNPC of spending the money on PMS subsidy are not credible. I have submitted proof that as from April, 2012, NNPC has consistently rendered returns to FAC indicating that it made no deductions for subsidy. This is after rendering returns on amounts deducted monthly for 20 consecutive months to March, 2012. NNPC had previously explained that it had stopped deductions from 2011 and that the N180b taken in Q1:2012 related to fuel imports for Q4:2011. As from 2012, the directive was for NNPC to submit its papers to PPPRA, the relevant government agency set up and given the responsibility for

verifying and paying subsidy claims. Having officially reported that it was not making deductions for fuel in 2012 and 2013, it is surprising that the GMD and GED of NNPC would now claim that \$8.49b was used to pay for subsidy.

I am convinced that a major source of revenue leakage from the system is NNPC's unverified claims for subsidy and unilateral deduction from the Federation Account. If we take the PPPRA template, subsidy/litre of PMS is about N44. This means that on each vessel of 30,000 MT, if we assume about 1,136litre/MT, the subsidy is around N1.5b. This means that for every \$1b claimed by NNPC as subsidy deduction, the corporation is claiming to have imported at least 100 vessels of PMS. In addition to the N180b reported in Q1:2011, NNPC had deducted N845 billion in 2011. Indeed According to the Farouk Lawan report, NNPC deduction for PMS subsidy in 2011 alone amounted to N1.7 trillion if we add claims on Excess crude naira account. Any serious investigation into these matters will require an audit of NNPC's database which it is statutorily required to keep based on subsidy guidelines. Only a verification of the legitimacy of these claims can form the basis for a true reconciliation.

3. Based on NNPC's disclosure to the effect that it shipped \$6b worth of crude oil on behalf of NPDC, I have argued here that at least a part of this amount is due to the Federation Account. This part relates to oil produced from blocks operated under "Strategic Alliance Agreements" with Atlantic Energy and Septa (or Seven Energy). I have given you three legal opinions that unanimously argue that these agreements merely serve to transfer revenue due to the Federation to private hands. I have also shown how, based on these agreements, NNPC has effectively given tax relief and concessions to its business partners.

Atlantic and Seven do not pay PPT or royalty. Also customs duties and levies are treated as "development costs" and recouped from "cost oil" and "cost gas". These companies recover OPEX and Capex from production, take 20-70% of the profit and pay no tax, on JVs in which the Federation was previously entitled to 55% of the entire profit oil when Shell was the operator. I have given details of these transactions and my concerns in the paper.

4. Although the above 3 areas exhaust the areas covered in NNPC's explanations, I have also taken time to submit my analysis of the crude-for-refined-product swap contracts entered into by PPMC. This is because a significant part of the domestic crude taken by NNPC is in these transactions. I have indicated where I believe we are losing money in these transactions.

Reconciliation

Having thus explained my major opinions on NNPC's explanations I will come to the reconciliation.

NNPC itself has submitted that it lifted \$67b worth of Crude between Jan 2012 and July 2013. Of this, we have been able to agree that the following amounts have been remitted to the Federation Account:

- 1) \$14 billion as equity crude.
- 2) \$15 billion as payment to FIRS by IOCs. They paid in crude which was lifted by NNPC on behalf of FIRS. There was nothing in our records linking the two transactions.
- 3) \$2 billion Royalty payment to DPR by IOCs under similar arrangements as in (2) above.

- 4) \$16billion out of the \$28b taken as Domestic Crude paid in Naira, not dollar.

The following items are outstanding and need to be proven by NNPC.

1. \$12 billion out of domestic crude sales yet to be remitted. NNPC has already disclosed N180 billion as subsidy payments in Q1:2012. If PPPRA confirms this number we will adjust the balance accordingly. As for the balance of \$10.8 billion, NNPC has publicly disclosed that 80% applied to petrol & kerosene subsidy. We have already explained why this explanation is untenable & NNPC needs to provide the relevant proofs.
2. \$6 billion shipped on behalf of NNPC. We have explained why some of this belongs to the Federation and the need to investigate and audit the SAAs to recover amounts unconstitutionally diverted.
3. \$2 billion "third-party" financing" we have not been given any documents explaining or proving this along with other claims around pipeline repairs, maintenance, strategic reserves etc..

There was no appropriation for these expenses and NNPC also needs to substantiate them.

In summary, it is established that of the \$67 billion crude shipped by NNPC between January 2012 and July 2013, \$47 billion was remitted to the Federation Account. It is now up to NNPC, given all the issues raised, to produce the proof that the \$20 billion unremitted either did not belong to the Federation or was legally and constitutionally spent. There is no dispute that \$20 billion out of \$67 billion has not been paid into any account with the CBN.

Our recommendation remains that this matter requires thorough independent investigation, as simple explanations will not suffice.

I concluded my submission with recommendations for the future, to protect the economy from these unsustainable losses:

I would like to make the following recommendations going forward:

Recommendations

- 1) NNPC should stop collecting 440,000bbl daily as "Domestic Crude". The amount of crude should be reduced to the refining capacity of its refineries based on a signed refining contract that clearly states what products are to be delivered for each barrel taken. Sale proceeds net of recognized processing costs are to go to the Federation Account;
- 2) All crude for Product Swaps should be terminated and crude should be exported and sold at market price
- 3) Where NNPC needs to generate cash flow to fund PMS Imports, it can "borrow" crude, on the approval of the Finance Minister, for 90 - 120 days. This crude is to be valued at the ruling market price. NNPC may sell the crude, import PMS and sell through its outlets. It should claim subsidy from PPPRA like every other marketer and present all required documents. Thereafter NNPC should pay back the full value of crude lifted to the Federation Account and retain the profit. Where NNPC delays payment the amount outstanding should attract interest at commercial rates until payment.
- 4) All the SAAs entered into by NPDC should be investigated for constitutionality. The production numbers, Opex and Capex, and profit

shares should be audited. The tax arrangements entered into with these parties should be reviewed³ and all revenues due to the Federation collected. If possible the SAAs should be terminated. Certainly, NNPC should be prohibited from entering into any SAAs in the future.

- 5) NNPC to account for subsidies claimed in 2010-13 by producing documentary proof of legitimacy. Also to produce their authorization for paying kerosene subsidy after July 2009.

As for what action needs to be taken on what has happened in the past, we express no opinion. The decision on what to do in this case rests entirely with the Government. My task is limited to raising an alarm over what I think is a development that is harmful to the economy, and establishing that the alarm was neither spurious nor baseless. I still insist that an investigation is needed to establish the extent of the losses and the nature of offence committed.

I believe I have placed enough information before this committee to make the point. The amount in 19 months may be \$10.8 billion or \$12 billion or \$19 billion or \$21 billion, we do not know at this point but if we extend the period the amount will increase anyway, since this has been going on for a long time. The first priority is to stop it. It is unsustainable, and it will ultimately, if not stopped, bring the entire economy to its knees.

Thank you,

Sanusi Lamido Sanusi, CON
Governor, Central Bank of Nigeria